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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190207082-9433-02]

RIN 0648-XG800

**Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2019 and
Projected 2020-2021 Specifications**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2019 spiny dogfish fishery, and projected specifications for fishing years 2020 and 2021. The specifications are necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Spiny Dogfish Fishery Management Plan. This rule is also intended to inform the public of these specifications for the 2019 fishing year and projected specifications for 2020 and 2021.

DATES: Effective *[insert date of publication in the FEDERAL REGISTER]* through April 30, 2020.

ADDRESSES: Copies of these specifications, including the Environmental Assessment (EA), Regulatory Flexibility Act Analyses, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at

<http://www.mafmc.org/dogfish>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish fishery is jointly managed in Federal waters by the New England and Mid-Atlantic Fishery Management Councils under the Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council serving as the administrative lead. The Atlantic States Marine Fisheries Commission manages the fishery in state waters from Maine to North Carolina through an interstate fishery management plan. Regulations implementing the spiny dogfish FMP appear at 50 CFR part 648, subparts A and L, and require the specification of an annual catch limit (ACL), annual catch target (ACT), and the total allowable landings (TAL). These limits and other management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action implements spiny dogfish specifications for the 2019 fishing year, and announces projected specifications for 2020 and 2021, as recommended by the Councils.

The proposed rule for this action published in the **Federal Register** on March 29, 2019 (84 FR 11923), and comments were accepted through April 15, 2019. Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

Final Specifications

This action implements the final 2019 and projected 2020-2021 spiny dogfish specifications (Table 1) as described in the March 29, 2019, proposed rule. These specifications substantially reduce the coastwide commercial quota in 2019 to ensure overfishing does not occur. Quota increases are projected for 2020 and 2021 as the stock biomass is expected to increase and the risk of overfishing declines. The lower catch limits are not expected to have a substantial impact on industry, as the reduced coastwide quotas remain higher than total annual landings in recent years.

Table 1. Summary of Final 2019, and Projected 2020 and 2021 Spiny Dogfish Fishery Specifications.

	2019		2020		2021	
	metric tons	pounds	metric tons	pounds	metric tons	pounds
Overfishing Limit	21,549	47,507,413	N/A	N/A	N/A	N/A
Acceptable Biological Catch	12,914	28,470,497	14,126	31,142,499	16,043	35,368,761
ACL = ACT	12,865	28,362,470	14,077	31,034,473	15,994	35,260,734
TAL	9,390	20,701,000	10,602	23,373,409	12,519	27,599,671
Commercial Quota	9,309	20,522,832	10,521	23,194,835	12,438	27,421,096
Percent Change in Quota from Previous Year	-46	-46	+13	+13	+18	+18

All other fishery management measures, including the 6,000-lb (2,722-kg) Federal trip limit, remain unchanged. Changes to the trip limit may be pursued in a future, separate rulemaking action. By providing projected quotas for 2019 and 2020,

NMFS hopes to assist fishery participants in planning ahead. The Councils will review these specifications annually, and NMFS will provide notice prior to each fishing year to finalize specifications and related measures.

Comments and Responses

The public comment period for the proposed rule ended on April 15, 2019. Five comments were received from the public on this rule during the 15-day comment period. No changes to the proposed specifications were made as a result of these comments.

Comment 1: One commenter requested that the spiny dogfish quota be reduced by 50 percent to prevent overfishing, claimed that widespread corruption and commercial profiteering was taking place across all fisheries, and asked that all trawl gear be banned. No rationale or evidence was presented to support the commenter's claims.

Response 1: This action does reduce the commercial spiny dogfish quota by 46 percent to prevent overfishing, which is almost the 50 percent requested by the commenter. Banning trawl gear is beyond the scope of outcomes contemplated in specifications.

Comment 2: Another commenter alleged that the spiny dogfish quota should not be reduced because they prey on valuable groundfish.

Response 2: This action manages the spiny dogfish fishery in terms of the target species' stock health and availability. At this time, the FMP does not account for predation effects by spiny dogfish on other species.

Comment 3: The commenter supported this action and the quota reduction, but was also concerned with inaccurate data from trawl fisheries, and effects on the recreational spiny dogfish fishery.

Response 3: These specifications were developed using the best scientific information available, which includes fishery independent trawl surveys. These surveys are conducted by the Northeast Fisheries Science Center and others, and are not solely dependent on trawl reporting data from within the fishery. Also, there are no Federal regulations governing the spiny dogfish recreational fishery; these specifications apply to the commercial fishery only. For more information on recreational spiny dogfish regulations, contact the Atlantic States Marine Fisheries Commission or your local state agency.

Comment 4: One commenter supported this action, but did not believe that immediate action is required. They agreed that quotas should be reduced in future years to prevent overfishing (perhaps by using limited protected areas), but for now, the stock is stable, and dogfish eat other groundfish species so the population should be controlled.

Response 4: This action reduces the dogfish quota to prevent overfishing based on the best scientific information available. Although the stock is not currently overfished or experiencing overfishing, biomass has been declining, and the quota reductions are a result of the application of the Mid-Atlantic Council's Risk Policy to prevent overfishing, consistent with National Standard 2 and the Magnuson-Stevens Act. As stated earlier, the FMP does not account for predation effects of spiny dogfish on other species.

Comment 5: This commenter supported this action's quota reductions for spiny dogfish to preserve future sustainability in the fishery. They also suggested that a sex-specific spiny dogfish fishery be considered to protect against harvest of pregnant females.

Response 5: NMFS agrees that these specifications will better maintain sustainability in the spiny dogfish fishery. Consideration of a sex-specific fishery and management measures was not discussed in this action and would need to be pursued separately by the Councils in the future.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure

that the final specifications are in place as close as practicable to the start of the 2019 spiny dogfish fishing year, which began on May 1, 2019. This action implements the final specifications (*i.e.*, annual catch limits) for the spiny dogfish fishery for the 2019 fishing year. A delay in effectiveness well beyond the start of the fishing year would be contrary to the public interest, as it could create confusion in the commercial spiny dogfish industry. Additionally, it could compromise the effectiveness of the lower catch limits in preventing overfishing while still allowing sustainable yield.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA, in support of the specifications, developed by the Mid-Atlantic Council. Following submission, documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses, as required in rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. A complete draft of the specifications document and accompanying EA was received in late November 2018. However, the recent lapse in federal appropriations prevented any work on this action from December 22, 2018, through January 25, 2019, and delayed approval of the final EA. As such, the final specifications document and EA was not completed and approved by NMFS until early March 2019. The proposed rule for this action published on March 29, 2019, with a 15-day comment period ending April 15, 2019. A 30-day delay in effectiveness would needlessly postpone implementation of the 2019 specifications beyond the start of the fishing year on May 1, which is contrary to the public interest.

Furthermore, the lower catch limits specified in this action should be implemented as soon as possible to minimize the potential for overfishing. Although the specifications from 2018 are carried into 2019 until new catch limits are implemented, the Councils have recommended a substantial reduction in commercial quota based on the most recent stock assessment update. Harvest occurring within the first weeks of the fishing year based on outdated, higher catch limits could further harm the resource, and subject it to a greater risk of overfishing.

Finally, regulated parties do not require any additional time to come into compliance with this rule, and thus, a 30-day delay in effectiveness does not provide any benefit. Unlike actions that require an adjustment period to comply with new rules, participants in the spiny dogfish fishery will not be required to purchase new equipment or otherwise expend time or money to comply with these management measures. Fishery stakeholders have also been involved in the development of this action and are anticipating this rule. Therefore, there would be no benefit to delaying the implementation of these specifications.

For these reasons, a 30-day delay in effectiveness would be contrary to the public interest, and is therefore waived. As a result, there is good cause to implement these specifications on *[insert date of publication in the FEDERAL REGISTER]*.

Final Regulatory Flexibility Analysis

The final regulatory flexibility analysis (FRFA) included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the initial regulatory flexibility analysis (IRFA) and a summary of analyses completed to support the action. A public

copy of the environmental assessment/IRFA is available from the Mid-Atlantic Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS did not receive any comments in response to the IRFA or regulatory flexibility analysis (RFA) process. Refer to the "Comments and Responses" section of this rule's preamble for more detail on the public comments that were received. No changes to the proposed rule were made as a result of public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This final rule affects small entities engaged in commercial fishing operations in the spiny dogfish fishery. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Because of this, some vessels with spiny dogfish permits may be considered to be part of the same firm because they may have the same owners. In terms of RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size.

The current ownership data set used for this analysis is based on calendar year 2017 (the most recent complete year available). In 2017, there were 2,254 vessels that

held a spiny dogfish permit, while 244 of these vessels contributed to overall landings. Cross-referencing those permits with vessel ownership database revealed that 1,695 entities owned those vessels. 1,685 were classified as small entities, with the remaining 10 classified as large businesses. Of the 1,685 small entities, 374 had no revenue in 2017, 1,104 were commercial fishing entities, and 207 were for-hire entities. Overall, there were 227 entities with spiny dogfish permits that reported revenue from spiny dogfish landings during 2017. Of those entities, 1 was large and 226 were small and their average overall revenues in 2017 were \$0.4 million.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Specification of commercial catch limits is constrained by the conservation objectives of the FMP and the Magnuson-Stevens Act. This action implements final 2019 and projected 2020-2021 commercial catch specifications for the spiny dogfish fishery based on the most recent stock assessment update. The Councils also considered taking no action, where the same catch limits and specifications from fishing year 2018 would continue into 2019 with no change. Only these two alternatives were considered by the Councils. NMFS is somewhat constrained in approving specifications in that the agency can approve, disapprove, partially approve, or in very limited circumstances substitute

measures to end overfishing and rebuild stocks if Council-recommended measures will not do so. Because of this, there are limited options to minimize potential impacts on small entities.

This rule decreases the commercial quota by 46 percent to 9,309 mt in 2019, followed by modest projected increases to 10,521 mt and 12,438 mt, in 2020 and 2021, respectively. Although the 46-percent reduction in 2019 is a substantial quota change, landings reports from the most recent available full fishing year (2017) show that 7,439 mt of spiny dogfish were landed. Available landing information for fishing year 2018 is around 23 percent lower than in 2017. Given this data, it is likely that the reduction in quota for 2019 will not constrain the spiny dogfish industry, including small entities.

If the fishery were to reverse the recent landing trends and achieve the proposed 2019 quota, it would still generate more landings and likely more revenues than the most recent year (2017) of full fishery information. Therefore, it is expected that the proposed action will have minimal impact on small entities.

Taking no action was also considered, where the same catch limits and specifications from 2018 would continue into 2019 and beyond. This may have had a higher potential to minimize short-term economic impacts on small entities, as the quotas would remain higher, providing the potential for greater revenues and economic gain. However, as previously stated, effort and landings in the spiny dogfish fishery have been low in recent years, and higher quotas increase the risk of overfishing without addressing the issues in the market that may be keeping landings low. Therefore, maintaining status quo specifications was not recommended by the Councils because it would exceed catch

level recommendations, put the spiny dogfish stock at an unnecessary risk of overfishing, and would be inconsistent with the requirements of the Magnuson-Stevens Act.

NMFS does not anticipate any significant economic impacts on small entities as a result of implementing the reduced quotas in this action. While there is a substantial reduction in the 2019 ACT and commercial quota, analyses indicate that coastwide spiny dogfish landings have been less than these approved specifications in recent years. It is unlikely that potential revenue losses would be directly affected by these quota reductions. In addition, these quotas are projected to increase in 2020 and 2021, so any impact to small entities affected by this action may be remedied quickly as the risk of overfishing subsides.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared and will be sent to all holders of Federal permits issued for the spiny dogfish fishery. In addition,

copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS at the following website: www.greateratlantic.fisheries.noaa.gov.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2019

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service.

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